AU AH WAH v. LEE SOW KENG & ORS.

[F.C. (Raja Azlan Shah C.J. (Malaya), Wan Suleiman & Abdul Hamid F.JJ.) October 12, 13, 1980 & February 16, 1981]

[Kuala Lumpur — Federal Court Civil Appeal No. 138 of 1980]

Legal Profession — Disciplinary proceedings — Failure to pay money into client's account — Dishonest conduct in discharge of professional duty — Conduct unbefitting of advocate and solicitor — Advocate and solicitor struck off the Roll — Enquiry — Burden of proof — Proof beyond reasonable doubt — Solicitors' Account Rules, 1974, rr. 3, 6 & 8(2) — Legal Profession Act, 1976, s. 96(1).

In this case the Bar Committee held an enquiry on receipt of a complaint that a cheque given by the appellant to his client had been dishonoured. Subsequently as a result of the hearing of the complaint the Disciplinary Committee found that the appellant had contravened the Solicitors' Accounts Rules, 1974 in a number of respects and the Committee found that the appellant was guilty of dishonest conduct in the discharge of his professional duty and of conduct unbefitting an advocate and solicitor. The Committee considered that he was not a fit person to be an advocate and solicitor and ordered his name be struck off the roll. (See P.U.(B) 365/80). The appellant appealed and on the appeal it was argued that the proceedings were wrongly treated as civil proceedings but as the proceedings were punitive in nature proof should have been beyond reasonable doubt.

Held, dismissing the appeal: on the evidence if the Bar Committee had required proof beyond reasonable doubt, it could not as a reasonable body of men have come to any other conclusion than that the evidence had discharged that burden more than amply.

FEDERAL COURT.

Abdul Kadir Kassim for the appellant.

K.L. Hee for the Pahang Bar Committee.

Cur. Adv. Vult.

Raja Azlan Shah C.J. (Malaya) (delivering the judgment of the Court): The appellant Mr. Au Ah Wah is an advocate and solicitor practising in the State of Pahang. On receipt of a complaint from a client of the appellant that he had delivered a cheque of $27,205 to his client, and that that cheque had been dishonoured when presented for payment, the Bar Committee duly held an enquiry under section 96(1) of the Legal Profession Act. During the course of the enquiry the Committee learnt that the appellant had paid complainant by another cheque. Mr. Au made no attempts to deny any of the facts stated in the complaint made to the Bar Committee but merely stated that the delay in payment was due to misplaced files.

In the course of the enquiry the Bar Committee learned that Mr. Au had 2 clients' accounts in two different banks at the time the cheque complained of was issued and with $799.63 in credit on the first and $346.04 on the other. Though the cheque had been dishonoured because it was stopped by Mr. Au, if it had not it would still have been dishonoured.

The Bar Committee further found that Mr. Au was in breach of the Solicitors' Accounts Rules 1974. They were asked to furnish particulars in writing by the Disciplinary Committee and the hearing adjourned to April 4, 1980 with Mr. Au's consent, to enable the particulars to be supplied to him and to give him sufficient time to consider his answers thereto. At the beginning of the resumed hearing he confirmed that he was ready to deal with the particulars and that the facts as stated therein were correct.

At the conclusion of the hearing, the Disciplinary Committee found that Mr. Au had contravened rule 3 of the Solicitors and Advocates Accounts Rules 1974 which requires him to pay client's money without delay into a client's account; rule 6 which prohibits the payment of money into a client's account other than monies authorised by the rules; and rule 8(2) prohibiting the withdrawal of money from a client's account other than that authorised.

The Committee also found that Mr. Au had been guilty of dishonest conduct in discharge of his professional duty and also otherwise guilty of conduct unbefitting an advocate and solicitor. The Committee had also formed the view that Mr. Au was a person who had little or no regard for the clients' interest, whose conduct showed that he had exhibited no compunction in using clients' money for his own purposes. In consequence they did not consider him to be a fit person to be an advocate and solicitor and ordered his name be struck off the Roll.

Inche Abdul Kadir for Mr. Au based his appeal on one ground only. He complained that the proceedings were treated as civil proceedings but is yet punitive in nature. He contended that since no procedure had been prescribed criminal procedure should have been applied. Though he did not say so, the implication is that if criminal procedure was applicable, then the burden of proof on the complainant, and in this case the Bar Committee Pahang, would be the criminal and not the civil burden.

The evidence before the Bar Committee consisted in the first place of an admission by Mr. Au that he had received a sum of money from a client. That was money that must be deposited in one or the other of the clients' accounts operated by him. It was not to be drawn out except for the client's purpose or to be returned to him. The other important item of evidence, backed by irrefutable evidence from the bank, was that at the material time, when Mr. Au wrote out a cheque for the specific purpose of returning this money to his client, there was no money in either or both his clients' accounts to meet this cheque. That cheque was stopped by Mr. Au for a reason not made known to the Bar Committee but as we have remarked earlier, if it had been presented, it would have been dishonoured for insufficient funds.

On this evidence, it seems to us to be an unnecessary and unjustifiable quibble to contend that the Bar Committee wrongly required the complaint to be proved by proof on a balance of probabilities. If the Bar Committee had required proof beyond reasonable doubt, it could not as a reasonable body of men have come to any other conclusion than that this evidence had discharged this burden more than amply.

We therefore dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Kadir, Tan & Ramli; H.Y. Lee & Hee.*